CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 1146 of 2005
Original Application No. 1147 of 2005

Jabalpur, this the 12th day of January, 2006

Hon'ble Shri M.K. Gupta, Judicial Member

1. **Original Application No. 1146 of 2005** -

Arun Makwana, S/o. Shri
Khoobchand Makwana, aged about
42 years, Occupation – Technician Gr. II,
O/o. SSC TRD PSI Ujjain,
R/o. 1004/A, Railway Loco Colony,
Ujjain. .... Applicant

2. **Original Application No. 1147 of 2005** -

Narayan Singh, S/o. Shri Kanji Aged
About 48 years, Occupation – Technician
Gr. III, O/o. SSC TRD PSI Ujjain,
R/o. 40/4, Shri Ram Colony,
Gali No. 2, Ujjain. .... Applicant

(By Advocate – Shri K.N. Pethia in both the OAs)

Versus

1. Union of India, through the General Manager, Western Railway, Church Gate, Mumbai.

2. Divisional Railway Manager, West Railway, Ratlam Division, Ratlam.

3. Senior Divisional Electrical Engineer, Westrn Railways, TRD, Ratlam. .... Respondents in both the OAs

(By Advocate – Shri M.N. Banerjee in both the OAs)

O R D E R (Oral)

Since the issue raised in the OA No. 1147 of 2005 and 1146 of 2005 is common in nature, the present common order will deal with both OAs.

2. For the purpose of facts, OA No. 1147 of 2005 will be treated as leading case.

3. The facts as stated are that the applicant, working as Technician Grade-III (PSI), Ujjain, vide order dated 12.8.2005, has been transferred and posted to the office of SE (PSI, Sehore) in the garb of restructuring of the cadre of Electrical Technical Staff in Ratlam Division, which is illegal and arbitrary in as much as the said post and vacancy had been available at the Ratlam Station which was adjacent and nearby station to the said place of posting and therefore, there is no fairness maintained by the respondents in passing the impugned order.

4. On earlier occasion, the applicant instituted OA No. 841/2005 challenging the said posting order dated 12th August, 2005, which came to be disposed of vide order dated 10.11.2005 as the applicant's representation dated 1st September, 2005 had been pending with the respondents for consideration, with a direction to dispose of the same by passing a speaking detailed and reasoned order, and, in the meantime, the respondents were restrained from disturbing the applicant's said place of posting.

5. Pursuant to the aforesaid directions the respondents passed the order dated 30.11.2005 and maintained their earlier order of transfer/posting dated 12th August, 2005. It is stated that in Ujjain Division, there had been two posts excess in the cadre of TCN-III and TCN-II, one each respectively, and therefore the applicant had been adjusted at Sehore, where there was a shortage/vacancy in existence.

6. The respondents contested the claim laid in the OA and stated that apart from merits, the applicants are guilty of suppressing material facts in as much as they were relieved on 5.12.2005 which fact had not been mentioned though the OAs in question had been filed on 8.12.2005.

7. On merits, it has been stated that for the purpose of maintenance in the electrification functioning between the Railway tracks of Ratlam Division there are sixty numbers of sanctioned posts of Technicians available. Technicians are placed under one group comprising of Sr. TCN, TCN-I, TCN-II and TCN-III and wherever needed they are required to perform maintenance work in electrification. With reference to the station wise Technicians in the Ratlam Division, particularly with reference to each station, it was pointed out that two technicians namely the applicants were working in excess at Ujjain, whereas there had been shortage of one technician at Makshi and one at Sehore, therefore, purely on administrative exigencies for proper deployment of technician keeping the position of station wise workload, the transfers had been made.

8. I have heard the learned counsel for the parties at length and perused the pleadings.

9. Shri K.N. Pethia learned counsel appearing on behalf of the applicants vehemently contended that though vacancies were available at the Ratlam Station, they have been deputed to Satna and Makshi respectively and favour has been done to two persons, in the grade was TCN Grade-I who were in excess of the sanctioned strength at Ratlam station. It is pointed out that vide the impugned order dated 12.8.2005 Shri Dayaram Sripal has been transferred from Ujjain to Nagda on his own request despite the fact there existed one person in excess at latter station. It is also pointed out that such aspects have not been considered by the respondents while passing the impugned order dated 12th August, 2005 in the case of the applicants. These contentions were disputed by the respondents.

10. It is well settled law as laid down in the case of Union of India & Ors. Vs. S.L. Abbas, (1993) 25 ATC 844, that who should be posted where, is the sole prerogative of the executive government. Unless the order is said to be malafide or is in breach of statutory rules, the same cannot be interfered by the Courts/Tribunal. The said law is still in force and applicable in the facts and circumstances of the present cases. In the present case neither there had been allegations of any malafide nor the impugned order dated 12th August, 2005 was issued in breach of statutory rules in vogue.

10.1. Such being the case and when the aforesaid law hold good and in view of the facts and circumstances of the present cases, I find no justification to interfere with the transfer order particularly when the applicants neither stand to loose their seniority nor their pay. Accordingly, the OAs are dismissed. No costs.

(M.K. Gupta)
Judicial Member

"SA"

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

(1) [illegible] जबलपुर

(2) .....वे काउंसल K.N. Pethiyar 16.1.06

(3) .....वे काउंसल M.K. Benarjee 16.1.06

(4) [illegible]

उप रजिस्ट्रार

16.1.06